

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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In the Matter of the Complaint of :  
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THE CITY OF NEW YORK, as Owner :  
and Operator of the M/V ANDREW J. BARBERI :  
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**ORDER**

03-CV-6049 (ERK) (VVP)

KORMAN, Chief Judge:

In an amended order dated February 12, 2007, I invited the defendant, the City of New York, to advise me how it would be prejudiced, beyond the prejudice that otherwise accompanies the admission of relevant evidence, by my consideration of a document that was not included in the documentary evidence that the parties stipulated would constitute the record upon which the issue of limitation of liability would be tried. The City was to file a response by February 16, 2007. The City now requests an extension of this deadline until Friday, March 2, 2007. This request, on its face, seems inordinate considering the City has been aware of this document since the plaintiffs included it among their exhibits in support of their memorandum of law for summary judgment that was filed on August 3, 2005.

As I stated in the amended order, if a case were tried before a jury, I would have the discretion to reopen the case to allow for presentation of additional evidence and I would also have the discretion to allow a party to present evidence that it did not include in a signed pretrial order. Moreover, the only portion of this document that I intend to make a part of the record is the sentence relating to the reason behind the two-pilot rule – that the second pilot protects against the risk of harm to passengers that would result “[s]hould the Captain suffer any sudden disability preventing him from exercising his duty.” Department of Marine and Aviation Rules and Regulations at 6

(1958). This information should make it easier for the City to respond to my inquiry. Under these circumstances, a one week extension of the deadline, until Friday, February 23, 2007, is more than a reasonable amount of time. Barring unforeseen circumstances, I am prepared to file my decision on the limitation of liability issue at 10 a.m. on Monday, February 26, 2007.

SO ORDERED.

Brooklyn, New York  
February 15, 2007

Edward R. Korman

Edward R. Korman  
United States Chief District Judge